

REMARKS

Reconsideration and withdrawal of the rejections to this application are respectfully requested in view of the amendments and remarks made herein which place the application in condition for allowance.

Claims 14-35 are pending. Claims 1-13 are cancelled, and new claims 14-35 are added, without prejudice, to advance prosecution. The amendment and the remarks made herein are not made for reasons related to patentability and, thus, do not prevent the application of the doctrine of equivalents. Support for new claims 14-35 is found throughout the specification and from the cancelled claims.

No new matter has been added.

Claims 12 and 13 were rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. The rejection is traversed. The cancellation of claims 12 and 13 render the rejection moot.

Consequently, reconsideration and withdrawal of the Section 101 rejection are respectfully requested.

Claims 1-13 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over PCT WO 91/06215 to Heinrich in combination with FR 2 599 593 to Bertrand. The rejection is traversed. None of the cited documents, either alone or combination, teach, suggest or motivate a skilled artisan to practice the instantly claimed invention.

The instant invention is directed to tenside/solvent systems for liquid formulations, preferably in one phase, comprising a component mixture of one or more aromatic-based surfactants and one or more completely esterified organic phosphates and/or phosphonates which

are polar solvents and at the same time are water-insoluble or soluble in water up to 5 g/l, and which do not form micelles in water. The instant invention is not obvious over the cited art.

Heinrich relates to emulsifiable concentrates (ECs) based on organic solvents and useful for herbicidal active ingredients selected from (hetero)aryloxyphenoxypionates in combination with safeners such as fenchlorazole. The EC formulations have carboxylic acid esters or phosphoric acid esters as stabilizing agents. In Example 2, at page 9, line 22 in Heinrich, the combination of *tributyl phosphate* and dodecylsulfonate-CA is noted.

Bertrand is equally defective. Bertrand relates to formulations of *tributyl phosphate* in combination with polyalkoxylated nonylphenol and phenmedipham. The references do not mention other types of phosphoric acid esters such as, for example, tri(butoxyethyl) phosphate.

The instantly claimed invention, by contrast, does not relate to phosphates such as tributyl phosphate. Instead, the instant specification notes that conventional formulations, such as those in Heinrich and Bertrand, are disadvantageous (see page 4, lines 7-8, lines 12, 13, 16, and page 15, lines 15-16, 19 and at page 19, table 1, compound in line 6).

More specifically, tributyl phosphate does not fall within the scope of the instant invention because tributyl phosphate is an ester on the basis of an alkanol having 4 carbon atoms. The alkanols of the instant invention, by contrast, have at least 5 carbon atoms.

Additionally, tributyl phosphate does not possess enough solvent power compared with the instantly claimed solvents. As mentioned at page 14, lines 26 to 34 of the instant specification, tributyl phosphate in combination with an aromatic tenside does not prevent crystallization of active ingredients, such as ethofumesate, and, thus, does not result in a stable

EC. Applicants unexpectedly discovered that tributoxyethyl phosphate, by contrast, resulted in ECs being stable against crystallization of the active ingredient.

One skilled in the art, therefore, would not be motivated to combine the cited art in order to practice the instantly claimed invention. More specifically, a skilled artisan would not be motivated to combine Heinrich and Bertrand in order to choose the specific components from the various teachings of the cited references in order to practice the claimed combination of components needed for stable EC formulations, said EC formulation not having the drawbacks noted above, and EC formulations having improved stability over a wider range of concentrations of the active ingredient compared to known formulations.

Further, Applicants respectfully point out that “obvious to try” is not the standard upon which an obviousness rejection should be based. *See In re Fine*. And as “obvious to try” would be the only standard that would lend the Section 103 rejections any viability, the rejections must fail as a matter of law.

Consequently, reconsideration and withdrawal of the Section 103 rejections are respectfully requested.

In view of the above remarks, it is respectfully submitted that this application is now in condition for allowance. Favorable consideration of the claims is earnestly solicited. If, however, there is still an outstanding issue, the Examiner is urged to contact the undersigned for its prompt attention.

Respectfully submitted,

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